

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7939 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SURENDRANAGAR DISTRICT PANCHAYAT - Petitioner(s)
Versus
S.R.PATKAGARA & 2 - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1, 2,3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 11/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 25th March, 1997 passed by the Industrial Tribunal, Rajkot in Reference [I.T.R.] No. 71 of 1990, whereby the Industrial Tribunal has directed the petitioner to treat the respondents permanent w.e.f. 1st

January, 1998 and shall also carry out National Pay Fixation from 1st January, 1990 to 31st December, 1995 along with arrears w.e.f. 1st January, 1996.

2. The short facts of the case are that the respondents were working on the project in the irrigation division of the petitioner Panchayat. Their services were rendered as and when the work was available with the petitioner. In absence of availability of work, the respondents were relieved from the service. Feeling aggrieved by the said action, the respondents raised an industrial dispute which was ultimately referred to the Industrial Tribunal, Rajkot for adjudication. The Industrial Tribunal after appreciating the materials produced before it, granted reinstatement with full back wages. Pursuant to the said order, a petition was preferred before this Court, whereby this Court has reduced the back wages to 50%.

2.1. Moreover, the respondents preferred Recovery Application before the Industrial Tribunal whereby the Tribunal has granted 100% back wages and against the said order, the petitioner preferred Special Civil Application No. 12780 of 1994, whereby this Court on 19th

January, 1995 allowed the petition and accordingly the respondents were paid running pay scale and other benefits. Pursuant to the said order, the respondents approached the Industrial Tribunal by way of Reference being ITR No. 71/90 for regularization of their service. The Industrial Tribunal after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mr. Munshaw learned advocate for the petitioner has submitted that the term of Reference before the Industrial Tribunal was as under :-

“Whether Shri S.R. Patkagra, Shri D.A. Bhavsar, and Shri Valabhai Kalubhai should be made permanent on their designation and given the benefit of permanent employees with arrears from the date they completed 240 days of service?”

3.1. In spite of the aforesaid Reference, the Industrial Tribunal has not considered the fact that the petitioner was following the Government Policy dated 29th November, 1994, whereby the petitioner has already granted benefits to the respondents. Mr. Munshaw has further contended that in spite of there being any post,

the Tribunal has granted permanency w.e.f. 1st October, 1990. In support of his contention Mr. Munshaw has relied upon the Full Bench Decision of this Court in the case of **Amreli Municipality v. G.P.M.E. Union reported in 2004 (2) G.L.H. p. 692**, whereby the Court has observed as under:-

"After considering the decisions cited before us, the following principles emerge:
(A) No regularization or permanency can be effected de hors the statutory provisions or the guidelines.
(B) Long service put in by the workmen itself may not be a ground to regularize services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.
(C) To avoid nepotism and corruption, no back door entry in service.
(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption."

4. Though served none appeared on behalf of the respondent. I have heard the learned advocate for the petitioner. Having perused the materials produced on record, and in view of the Full Bench decision as aforesaid, I am of the opinion that the Industrial Tribunal has no jurisdiction to grant permanency to the

the respondents who were working purely on temporary and ad hoc basis, without following due recruitment procedure. Thus, the order passed by the Industrial Tribunal is required to be quashed and set aside.

5. In the result, the petition is allowed. The impugned award dated 25th March, 1997 passed by the Industrial Tribunal, Rajkot in Reference [I.T.R.] No. 71 of 1990 is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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